

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 18th day of March, two thousand nine.

PRESENT:

HON. PIERRE N. LEVAL,
HON. ROSEMARY S. POOLER,
HON. BARRINGTON D. PARKER,
Circuit Judges.

NAYE DIALLO,
Petitioner,

v.

06-4290-ag
NAC

ERIC H. HOLDER, JR., ATTORNEY GENERAL,*
Respondent.

FOR PETITIONER: Romben Aquino, Ferro & Cuccia, New
York, New York.

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder, Jr., is automatically substituted as the respondent in this case.

FOR RESPONDENT:

Gregory G. Katsas, Assistant Attorney General; James E. Grimes, Senior Litigation Counsel; Daniel Glenn Lonergan, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioner Naye Diallo, a native of Congo and citizen of Mali, seeks review of an August 31, 2006 order of the BIA, affirming the March 15, 2006 decision of Immigration Judge ("IJ") Joanna Miller Bukszpan, which denied her motion to reopen. *In re Naye Diallo*, No. A73 535 126 (B.I.A. Aug. 31, 2006), *aff'g* No. A73 535 126 (Immig. Ct. N.Y. City Mar. 15, 2006). We assume the parties' familiarity with the underlying facts and procedural history of the case.

We review the agency's denial of a motion to reopen for abuse of discretion. See *Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); see also *Ke Zhen Zhao v. U.S. Dep't of Justice*, 265 F.3d 83, 93 (2d Cir. 2001). Here, we find that the BIA did not abuse its discretion in denying Diallo's motion to reopen as untimely.

The BIA's regulations permit an alien to file a motion to reopen no later than 90 days after the date on which the final removal order was entered. 8 C.F.R. § 1003.23(b)(1). There can be no dispute that Diallo's February 2006 motion to reopen was untimely where the agency issued a final order of removal in May 1996. *See id.* However, there are no time limitations for filing a motion to reopen if it is "based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing." 8 C.F.R. § 1003.2(c)(3)(ii). As Diallo has never argued that changed country conditions should excuse the untimeliness of her motion, the agency did not abuse its discretion in denying that motion as untimely.

Moreover, the agency did not err in concluding that Diallo was ineligible to file a successive asylum application based on her changed personal circumstances. *See Yuen Jin v. Mukasey*, 538 F.3d 143, 151 (2d Cir. 2008). In *Yuen Jin*, we held that the BIA had reasonably interpreted the Immigration and Nationality Act and its implementing regulations to require aliens under final orders of removal

to file a successive asylum application in conjunction with a motion to reopen and in accordance with the procedural requirements for filing such motions. *Id.* at 156 (according *Chevron* deference to the BIA's interpretation of the INA announced in *Matter of C-W-L*, 24 I. & N. Dec. 346 (B.I.A. 2007)). Accordingly, as Diallo is under a final order of deportation and did not file a timely motion to reopen or demonstrate changed country conditions excusing the untimeliness of her motion, the BIA did not err in concluding that she was not eligible to file a successive asylum application based on her changed personal circumstances. See *id.* at 151, 156.

For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____